



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 21, 1995

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance MC-110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR95-423

Dear Ms. Rodriguez:

You have asked for reconsideration of Open Records Letter No. 95-183 (1995). This office determined in that informal decision that the provisions of section 552.103 of the Government Code did not except certain information from required public disclosure. We have assigned your request for reconsideration ID# 33174.

The Texas Department of Insurance ("TDI") received a request for information "concerning Jimmie Lee Hudson and William C. Cook." You raised several objections to disclosure of the information requested, including that the information at issue was excepted from disclosure pursuant to section 552.103(a). Based on the information you submitted to this office, we determined that section 552.103(a) was not applicable to the records at issue. You seek a reconsideration as to the applicability of section 552.103(a) to the requested information.

Your letter to this office indicated that TDI had or would release part of the requested information. As to the other information, you stated:

This information relates to an ongoing investigation of Jimmie Lee Hudson for alleged violations of state insurance laws. It is reasonably anticipated that this investigation may culminated in an administrative contested case with the person as a party. The attorney responsive for reviewing this matter has determined that the requested information is directly related to anticipated litigation.

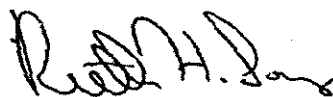
You submitted to this office "representative samples" of the information you sought to withhold from disclosure. We assumed that these samples were truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative samples, but if each record contains substantially different information then all must be submitted).

Our review of the sample documents submitted to this office indicated that they appeared to relate to the actions of another named agent. One of the records submitted indicated that TDI would not pursue litigation against this named agent. None of the documents submitted mentioned potential litigation involving Jimmie Lee Hudson. Although your letter indicated litigation was reasonably anticipated by TDI, because of what appeared to be an inconsistency between the records submitted and your statements we determined that section 552.103(a) was not applicable. However, on reconsideration, we believe that TDI demonstrated that litigation is reasonably anticipated and that the documents submitted to this office actually relate to that anticipated litigation.¹

The documents at issue may therefore be withheld from disclosure pursuant to section 552.103(a), to the extent that they have not previously been disclosed to the opposing party in the anticipated litigation. Open Records Decision Nos. 349 (1982), 320 (1982). We also note that the applicability of section 552.103(a) ends once litigation has concluded.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

¹As part of the reconsideration request, TDI asked this office to consider further proof of its section 552.103 claim that had not previously been submitted. This document appears to have been in existence at the time of your initial request for a decision. Once this office has issued a ruling, we cannot consider additional proof that litigation is reasonably anticipated for purposes of section 552.103. In the future, please enclose the "Request for Disposition" form that pertains to the pending litigation for which TDI asserts section 552.103(a) at the time of the request for a decision.

RHS/KHG/rho

Ref.: ID# 33174

Enclosures: Submitted documents

cc: Ms. Denise McVea
Dallas Observer
P.O. Box 190289
Dallas, Texas 75219
(w/o enclosures)